

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Yanjiao Chen	Team: Team # 3	CCRB Case #: 201312128	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 12/26/2013 8:01 PM	Location of Incident: In front of § 87(2)(b)	Precinct: 121	18 Mo. SOL 6/26/2015	EO SOL 6/26/2015	
Date/Time CV Reported Tue, 12/31/2013 11:56 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Tue, 12/31/2013 11:58 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. DT3 Steven Marshall	1207	938942	NARCBSI
2. DT3 Mark Scarlatelli	06287	937502	NARCBSI
3. SGT John Ryan	04913	940685	NARCBSI

Officer(s)	Allegation	Investigator Recommendation
A.DT3 Steven Marshall	Force: Det. Steven Marshall pointed his gun at § 87(2)(b) and § 87(2)(b)	§ 87(2)(b)
B.DT3 Mark Scarlatelli	Force: Det. Mark Scarlatelli used physical force against § 87(2)(b)	§ 87(2)(b)
C.SGT John Ryan	Abuse: Sgt. John Ryan frisked § 87(2)(b)	§ 87(2)(b)
D.DT3 Steven Marshall	Abuse: Det. Steven Marshall searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.	§ 87(2)(b)
E.DT3 Mark Scarlatelli	Abuse: Det. Mark Scarlatelli searched the car in which § 87(2)(b) was were occupants.	§ 87(2)(b)
§ 87(2)(g), § 87(4-b)	§ 87(2)(b)	§ 87(2)(b)

Case Summary

On December 31, 2013, § 87(2)(b) filed this complaint with the CCRB via the online website.

On December 26, 2013, § 87(2)(b) had just parked his cousin § 87(2)(b)'s vehicle in front of § 87(2)(b) in Staten Island, when Sgt. John Ryan, Det. Mark Scarlatelli, and Det. Steven Marshall of Narcotics Borough Staten Island, stopped him. The following allegations resulted from the incident:

Allegation A: Abuse of Authority – Det. Steven Marshall pointed his gun at § 87(2)(b)

and § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

Allegation B: Force – Det. Mark Scarlatelli used physical force against § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

Allegation C: Abuse of Authority – Sgt. John Ryan frisked § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

Allegation D: Abuse of Authority – Det. Steven Marshall searched the vehicle in which § 87(2)(b) and § 87(2)(b) occupied.

§ 87(2)(b), § 87(2)(g)

Allegation E: Abuse of Authority – Det. Mark Scarlatelli searched the vehicle in which § 87(2)(b) and § 87(2)(b) occupied.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(g), § 87(4-b)

This case was not eligible for mediation due to § 87(2)(b)'s arrest and injuries.

Results of Investigation

Civilian Statements

Complainant/Victim: § 87(2)(b)

- § 87(2)(b) was § 87(2)(b) at the time of the incident. He is an Asian man who is 6' tall, weighs 200 pounds, and has brown hair and brown eyes.
- § 87(2)(b)
- § 87(2)(b)

Statements to Medical Personnel

§ 87(2)(b) was brought to § 87(2)(b) on December 27, 2013, at around 12:30 p.m. He reported to the physician of “chipping his two front teeth when he was arrested [that] evening,” and having pain to that area (enc. MR-17).

CCRB Statement

§ 87(2)(b) was interviewed at the CCRB on January 30, 2014 (enc. C-1 – C-11). His in-person testimony was generally consistent with that of his initial narrative (enc. B-6 – B-7) and phone statement from May 2, 2014 (enc. CC-1). They are summarized below.

On December 26, 2013, at around 8 p.m. § 87(2)(b) and his family were hosting relatives for a party at their residence, § 87(2)(b) in Staten Island. When asked during his interview, § 87(2)(b) denied having had any alcohol, or taken any drugs prior to this incident. § 87(2)(b)'s cousin, § 87(2)(b) is the § 87(2)(b) located at 1551 Richmond Avenue in Staten Island. § 87(2)(b)'s supervisor had called to ask him to check up on the pharmacy, so § 87(2)(b) drove § 87(2)(b) there in § 87(2)(b)'s three-day old silver 2014 E350 Mercedes. After coming back from the pharmacy, § 87(2)(b) had stopped in the middle of Regis Drive looking for parking, when a midnight blue minivan pulled up in front of him, and officers subsequently identified as Sgt. Ryan, Det. Marshall, and Det. Scarlatelli stepped out. § 87(2)(b) had not noticed the unmarked vehicle before it stopped in front of him with its lights flashing.

Det. Scarlatelli approached § 87(2)(b) on the driver side, and Sgt. Ryan approached § 87(2)(b) on the passenger side. Det. Marshall stood at the front center of the Mercedes with his gun pointed at the car. Det. Scarlatelli commanded § 87(2)(b) through the rolled up window, to unlock the door and put his hands on the steering wheel. When § 87(2)(b) complied, Det. Scarlatelli opened the driver door and pulled § 87(2)(b) out of the car. § 87(2)(b)'s seatbelt had been buckled, but he could not recall how it was taken off before he was pulled out of the vehicle. Once § 87(2)(b) was out of the vehicle, Det. Scarlatelli pushed him around to face the car, and with one hand, slammed § 87(2)(b)'s head onto the roof of the car. § 87(2)(b) stated that he saw his teeth fly out from the slam but did not comment on it at the time, nor did he feel any specific sensation as he was just in shock from dealing with the police. Det. Scarlatelli had not said anything prior to the force. § 87(2)(b) denied resisting or making any physical movements prior to and after the physical force. Because of his interaction with Det. Scarlatelli, § 87(2)(b) did not know where Det. Marshall was positioned or what he was doing. § 87(2)(b) also did not hear or observe any of the interaction between Sgt. Ryan and § 87(2)(b).

Det. Scarlatelli then frisked § 87(2)(b) by patting the latter's torso, waistband, and pants, and searched him by going through the pants and jacket pockets. Det. Scarlatelli took out § 87(2)(b)'s cell phone and car keys and tossed them into the car. He yelled at § 87(2)(b) asking “Why don't you have your license?” § 87(2)(b) responded that his wallet was inside his

house. At that point, § 87(2)(b)'s older brother, § 87(2)(b) had come outside and stood right at the entrance of the house. § 87(2)(b) told § 87(2)(b) to go inside and get his wallet so that he could give Det. Scarlatelli his license.

After Det. Scarlatelli obtained § 87(2)(b)'s license, he told § 87(2)(b) to stand by the rear of the vehicle. Both § 87(2)(b) and § 87(2)(b) waited by the rear of the Mercedes while Sgt. Ryan watched over them. Although he stood facing away from the car, § 87(2)(b) turned his head around a few times and saw Det. Scarlatelli and Det. Marshall searching the vehicle. He could not however describe what the vehicle search entailed. The vehicle search did not yield anything. Afterwards, Det. Scarlatelli went to the rear of the car and told § 87(2)(b) "Your eyes are red, you have been drinking." One of the officers, § 87(2)(b) could not recall who, also accused him of speeding and almost causing a two vehicle collision. § 87(2)(b) refuted the latter accusation during his interview, but admitted that he may have been speeding.

§ 87(2)(b)'s family, and neighbor § 87(2)(b) (last name unknown), had all come outside prior to the vehicle search and were standing in front of the entrance to § 87(2)(b) § 87(2)(b) yelled to his cousin § 87(2)(b) "Look at what the police officers did, look at my teeth." When § 87(2)(b) asked which officer had caused the injury, § 87(2)(b) stated that it was the "officer in the red hoodie." Det. Scarlatelli was wearing a red hoodie during the incident. He denied causing the injury, stating "If you try to pin it on me, I'm gonna charge you with resisting arrest." Det. Scarlatelli told § 87(2)(b) to "calm down, you're not going to jail tonight," and went to speak with § 87(2)(b)'s family and § 87(2)(b).

Although § 87(2)(b) learned from Det. Scarlatelli that § 87(2)(b) was just going to be summonsed, it was during this conversation that Det. Marshall went up to § 87(2)(b) stated "You think you can do whatever you want," and handcuffed him. After being handcuffed, § 87(2)(b) asked Det. Marshall if they could look for his teeth as he was hoping they could be glued back on. Det. Marshall shined his flashlight onto the ground which did not reveal anything, but when he shined it onto the roof of the Mercedes, both he and § 87(2)(b) could see pieces of the latter's teeth indented into the car. § 87(2)(b) exclaimed "Oh man, look, those are my teeth," after which Det. Marshall immediately turned his flashlight away and did not say anything.

§ 87(2)(b) did not see § 87(2)(b) ever be frisked. § 87(2)(b) was not handcuffed and was let go. Sgt. Ryan, Det. Scarlatelli, and Det. Marshall drove § 87(2)(b) to a gas station nearby where § 87(2)(b) was transferred into another unmarked vehicle before being brought to the 121st Precinct stationhouse.

§ 87(2)(b) was held at the stationhouse for two hours before he started feeling head pain and requested medical attention. Two different officers brought him to § 87(2)(b) where the physician diagnosed him with chipped teeth. § 87(2)(b)

Photographs

§ 87(2)(b) provided pictures of his injury, and the corresponding damage to § 87(2)(b)'s car (enc. C-4 – C-5). Photo #1-2 depict § 87(2)(b)'s two upper middle teeth that were chipped, and photo #3-4 depict two long indents on the edge of the car hood, on the driver's side, of § 87(2)(b)'s car.

Statements in the Notice of Claim and 50-H Hearing

§ 87(2)(b) filed a notice of claim with the City of New York on § 87(2)(b) (enc. CA-1 – CA-4), for adjustment and payment with regards to the physical injuries he sustained during the incident. His statements in the Notice of Claim were consistent with that of his CCRB statement.

§ 87(2)(b) stated that when he stopped in the middle of Regis Drive, he noticed the unmarked police car come from behind him, pass him on the left, and then immediately make a U-turn before stopping in front of his car. § 87(2)(b) confirmed that the police vehicle stopped at an angle in a manner to block § 87(2)(b)'s way if he were to go straight.

Victim: § 87(2)(b)

- § 87(2)(b) was § 87(2)(b) old at the time of the incident. He is an Asian man who is 5'9" tall, weighs 190 pounds, and has black hair and brown eyes.

- § 87(2)(b)

CCRB Statement

§ 87(2)(b) was interviewed at the CCRB on February 21, 2014 (enc. D-1 – D-6). His statement was generally consistent with that of § 87(2)(b) and is summarized below with any differences noted.

On December 26, 2013, at around 8 p.m., when § 87(2)(b) and § 87(2)(b) had stopped in the middle of the road in front of § 87(2)(b) when they noticed an unmarked minivan with its lights turned on pull up in front of them. Det. Scarlatelli approached § 87(2)(b) Sgt. Ryan approached § 87(2)(b) on the passenger side, and Det. Marshall stood at the front of the Mercedes with his gun and flashlight pointed at the car. All three officers were yelling "Get out of the car!" § 87(2)(b) and § 87(2)(b) put their hands up and complied with the officers directives. Sgt. Ryan opened the passenger door and brought § 87(2)(b) out of the vehicle, turned him around, and placed his hands on the hood of the vehicle. § 87(2)(b) was facing the Mercedes and could see § 87(2)(b) who was in the same position but on the driver's side. § 87(2)(b) then observed Det. Scarlatelli grab § 87(2)(b)'s neck and head, and slam it down onto the hood of the Mercedes. He did not notice any injuries on § 87(2)(b) at the time, but observed § 87(2)(b) be completely compliant.

Soon thereafter, Det. Scarlatelli and Sgt. Ryan led § 87(2)(b) and § 87(2)(b) to the rear, and placed their hands on the hood of the vehicle. When § 87(2)(b) had been brought to the rear of the vehicle, he noticed § 87(2)(b)'s broken front teeth and exclaimed about the injury. Sgt. Ryan heard this comment but did not respond to it. Sgt. Ryan stood at the rear to watch over them as Det. Scarlatelli and Det. Marshall performed a vehicle search. Det. Scarlatelli and Det. Marshall looked through everything inside the car. They opened the glove compartment, looked underneath the foot mats, and the trunk. During the vehicle search, Sgt. Ryan patted § 87(2)(b) on the shoulders and the waistband, and searched through his jeans pockets, but did not recover anything.

When Det. Scarlatelli and Det. Marshall were searching the trunk, § 87(2)(b)'s family and neighbors appeared outside on the street. § 87(2)(b) shouted to his father, § 87(2)(b) "They broke my teeth!" Det. Scarlatelli denied this allegation, stating that he did not cause the injury, and that they were broken before the incident. All three officers were also stating at this time that § 87(2)(b) had been driving recklessly, and had almost caused a two-vehicle collision.

§ 87(2)(b) continued to say "You broke my teeth," at which point, Sgt. Scarlatelli stated, to no one in particular, that § 87(2)(b) was to be arrested. Det. Scarlatelli was speaking with § 87(2)(b)'s family members when Det. Marshall handcuffed § 87(2)(b) and led him to

the unmarked minivan. § 87(2)(b) had initially alleged that Sgt. Ryan handcuffed § 87(2)(b) but the investigation determined the officer to actually be Det. Marshall) § 87(2)(b) was let go. § 87(2)(b) had purchased his Mercedes three days prior to the incident, on December 23, 2013. § 87(2)(b)'s head being slammed into the hood of the vehicle caused two large scratches from where § 87(2)(b)'s teeth made contact.

Witness: § 87(2)(b)

- § 87(2)(b) is § 87(2)(b)'s father. The investigator did not obtain his pedigree information.

Telephone Statement

On February 26, 2013, § 87(2)(b) provided a telephone statement (enc. E-1).

On December 26, 2013, at around 8 p.m. § 87(2)(b) ran into § 87(2)(b) in Staten Island to tell his father, § 87(2)(b) that his brother § 87(2)(b) was with the police. § 87(2)(b) went outside and stood about twenty five feet away from where § 87(2)(b) and § 87(2)(b) were dealing with Sgt. Ryan and Det. Marshall at the back of a vehicle. Det. Scarlatelli approached § 87(2)(b) and said that everything was alright, and that he would be letting § 87(2)(b) go. However, § 87(2)(b) then shouted that the officers broke his teeth, to which Det. Scarlatelli responded that § 87(2)(b)'s teeth had already broken. § 87(2)(b) stated during his phone statement that § 87(2)(b)'s teeth were not broken prior to the incident. Once the officers heard about the broken teeth, they changed their stories, with Det. Scarlatelli saying that he had to bring § 87(2)(b) to the stationhouse because he had been driving really fast. Det. Marshall then handcuffed § 87(2)(b) did not witness the vehicle search, but was told about it by § 87(2)(b)

Witness: § 87(2)(b)

- § 87(2)(b) was § 87(2)(b) old at the time of the incident. He is an Asian man, and is § 87(2)(b)'s brother.

Telephone Statement

§ 87(2)(b) provided a telephone statement on April 9, 2014 (enc. E-2), and it is summarized below.

On December 26, 2013, at around 8 p.m., § 87(2)(b) observed § 87(2)(b) and § 87(2)(b) standing at the rear of § 87(2)(b)'s Mercedes, without handcuffs. Sgt. Ryan, Det. Marshall, and Det. Scarlatelli asked § 87(2)(b) to get § 87(2)(b)'s license. § 87(2)(b) complied, and at the same time, called out his dad, § 87(2)(b) and his uncle. They all went outside and stood about thirty feet away from § 87(2)(b)'s Mercedes.

Once § 87(2)(b) went outside with § 87(2)(b)'s license, § 87(2)(b) yelled about how the officers broke his teeth. He opened his mouth, and revealed a space in his front teeth. § 87(2)(b) was able to observe this from where he was standing. Det. Scarlatelli, who was wearing a red hoodie, stood in between § 87(2)(b) and § 87(2)(b) and spoke to § 87(2)(b) saying that § 87(2)(b) was just going to be brought to the stationhouse and then released. Det. Scarlatelli was also saying something along the lines that § 87(2)(b) had not been cooperating, and it was an accident. Det. Scarlatelli however did not say verbatim "I did not mean to chip his teeth."

At this time, Det. Marshall had gone inside the front passenger side of § 87(2)(b)'s car and opened the glove compartment, but did not retrieve anything from the vehicle. § 87(2)(b) did not see Det. Scarlatelli search § 87(2)(b)'s vehicle.

NYPD Statements:

Subject Officer: DET. MARK SCARLATELLI

- *Det. Scarlatelli was § 87(2)(b).*
- *Det. Scarlatelli worked between the hours of 3:27 p.m. on December 26, 2013, and 2 a.m. on December 27, 2013. He was assigned to plainclothes enforcement with Det. Steven Marshall and Sgt. John Ryan, was in plainclothes, and driving in unmarked vehicle number 47753.*

Memo Book

Det. Scarlatelli's memo book entries pertaining to this incident (enc. G-1 – G-3) stated verbatim that "at 8 p.m., one under, § 87(2)(b) 205.30, front of § 87(2)(b) Defendant was observed by leader auto, driving at a high rate of speed, recklessly, causing alarm to other motorists. Defendant did resist, refuse to exit vehicle, and disobeyed officers commands. Flaileed arms."

CCRB Statement

Det. Scarlatelli was interviewed at the CCRB on March 25, 2014 (enc. G-4 – G-6).

On December 26, 2013, at around 8 p.m., Sgt. Ryan, Det. Scarlatelli, and Det. Marshall observed a Mercedes commit a number of serious traffic violations, including speeding, and cutting off and almost colliding into other motorists. Det. Marshall was the vehicle operator that day, and immediately turned on the police lights to stop the Mercedes. The Mercedes did not stop, but continued to speed for thirty seconds, before stopping on its own in front of § 87(2)(b). The officers never lost sight of the Mercedes during the entire pursuit, and pulled up in front of the Mercedes. The intention of the vehicle stop was to arrest § 87(2)(b) for reckless driving.

Sgt. Ryan was sitting in the passenger seat, and Det. Scarlatelli was in the backseat. All three officers got out of their vehicle, with Det. Scarlatelli approaching the driver's side of the Mercedes and Det. Marshall approaching the front of the car. Det. Scarlatelli could not recall where Sgt. Ryan went. At the driver's side, Det. Scarlatelli issued a number of commands to § 87(2)(b) including "put your hands up, stop the car, exit the vehicle, and take your seat belt off." § 87(2)(b) however did not comply, and seemed to not hear what any of the officers were saying. Det. Scarlatelli could not see § 87(2)(b)'s hands, and in response, Det. Marshall drew his gun and pointed it at § 87(2)(b). Eventually, § 87(2)(b) opened his car door, but remained seated inside, with both hands clutching onto the seatbelt. He was turned to the right, facing the passenger side and speaking with § 87(2)(b). At that point, Det. Marshall holstered his gun, and walked over to the driver side of the Mercedes. (§ 87(2)(g))

Det. Scarlatelli commanded § 87(2)(b) to "take your seat belt off and step out of the car," but § 87(2)(b) continued to sit inside the car while holding onto his seatbelt. Det. Scarlatelli then reached in, unbuckled the seatbelt, and pulled § 87(2)(b) by the arm out of the Mercedes. § 87(2)(b) was not saying anything at this time, but § 87(2)(b) was saying that § 87(2)(b) should be compliant and should not have been speeding so much. Although Det. Scarlatelli did not have any problems getting § 87(2)(b) out of the car, the latter was tensing up and

evidently did not want to follow officer directives. Det. Scarlatelli was able to turn § 87(2)(b) around to face the Mercedes, and pat him down from the shoulders to the feet. He did not go into any pockets and did not recover anything. Sgt. Ryan had been able to get § 87(2)(b) out of the car without any difficulty.

Det. Scarlatelli stated that he frisked § 87(2)(b) for his own safety and for weapons, as he could not see § 87(2)(b)'s hands during the beginning of the incident, and did not know what was inside the car. During the frisk, § 87(2)(b) kept turning his body around and taking his hands off the car, but was still not saying anything. Immediately after the frisk, Det. Marshall handcuffed § 87(2)(b). Det. Scarlatelli then retrieved § 87(2)(b)'s license out of his wallet after the handcuffing and recorded his pedigree information.

At that point, § 87(2)(b)'s family had come outside, and one of the neighbors was trying to interfere with the situation. § 87(2)(b) was still not saying anything, and the family did not make any comments either. § 87(2)(b) was put into the backseat of Det. Scarlatelli's unmarked vehicle, transferred to a prisoner van, and then brought to the stationhouse.

During the entire incident, Det. Scarlatelli did not hear § 87(2)(b) complain about his teeth being chipped as a result of police force. He did recall § 87(2)(b) complaining about his mouth hurting, but was not aware of § 87(2)(b) being injured. While taking § 87(2)(b) out of the car, Det. Scarlatelli did use force, but it was minimal. He never punched or hit § 87(2)(b) and especially did not slam his head onto the car. § 87(2)(b) also was never physically aggressive. Det. Scarlatelli denied searching the vehicle, but stated that Det. Marshall at some point during the incident stuck his torso into the front driver and passenger side door to search the lunge-able areas around the driver's seat.

Subject Officer: DET. STEVEN MARSHALL

- *Det. Marshall was § 87(2)(b).*
- *On December 26, 2013, Det. Marshall worked between the hours of 1:27 p.m. and 10 p.m. with Det. Mark Scarlatelli and Sgt. John Ryan. He was assigned to plainclothes enforcement, was in plainclothes, and driving in unmarked vehicle number 47753.*

Arrest Report

In § 87(2)(b)'s arrest report (arrest no. S13613077), Det. Marshall stated verbatim (enc. I-1 – I-3) that “at the place of occurrence, defendant was observed driving a four door gold sedan (NY Plate # § 87(2)(b)) and did fail to stop at a stop sign. Defendant then proceeded to drive at a high rate of speed, change lanes numerous times without signaling, driving over pavement marking on shoulder of the road and entrance to expressway, while almost striking multiple vehicles causing danger of physical injury to other motorists and himself. Defendant did refuse to exit vehicle, disobeyed officers orders to exit the vehicle and did hold on seatbelt to further hinder the arrest.”

Force was recorded as not being used.

Criminal Court Complaint

Det. Marshall stated in § 87(2)(b)'s Criminal Court Complaint (enc. I-4 – I-5) that he observed § 87(2)(b) fail “to stop at a stop sign, drove at a speed in excess of the posted speed limit, changed lanes without signaling, drove over pavement markings...and nearly collided with two motor vehicles.”

Det. Marshall also stated that when he tried to arrest § 87(2)(b) for reckless driving, § 87(2)(b) “resisted arrest by refusing to exit his motor vehicle, hanging on to a seatbelt and

wrapping said seatbelt around his wrist, and knocking into Detective Mark Scarlatelli” to prevent the officers from handcuffing him.

Memo Book

Det. Marshall’s memo book entries pertaining to this incident (enc. F-1 – F-3) state verbatim that “at 8 p.m., 1 under – § 87(2)(b) – 205.33, front of § 87(2)(b)

CCRB Statement

Det. Marshall was interviewed at the CCRB on March 11, 2014 (enc. F-4 – F-6). His statement had a few inconsistencies with that of Det. Scarlatelli. It is summarized below with the differences noted.

On December 26, 2013, at around 8 p.m., Det. Marshall observed a Mercedes fail to stop at a stop sign, drive over the shoulder of the exit, and almost collide into two other cars. Det. Marshall turned on his lights and pursued the vehicle. § 87(2)(b) did not immediately stop, and only did so after Det. Marshall cut him off by pulling up in front of him. Det. Marshall, Det. Scarlatelli, and Sgt. Ryan all exited their vehicle, with Det. Scarlatelli approaching § 87(2)(b) and Sgt. Ryan approaching § 87(2)(b). Det. Marshall stood at the front of the Mercedes and commanded § 87(2)(b) to “show me your hands.” § 87(2)(b) did not comply, so Det. Marshall drew his weapon, and pointed it at § 87(2)(b).

Det. Scarlatelli and Sgt. Ryan were both commanding § 87(2)(b) and § 87(2)(b) respectively, to “get out of the car.” § 87(2)(b) was compliant, but § 87(2)(b) did not move. Det. Marshall moved to the driver’s side, upon which he saw § 87(2)(b)’s hands clutching the seatbelt, and then holstered his weapon. § 87(2)(b) had, from the beginning, been yelling and cursing, saying “this is fucking ridiculous, I didn’t fucking do anything.” Det. Scarlatelli unbuckled § 87(2)(b)’s seatbelt, and pulled him by the arm out of the vehicle. He then turned § 87(2)(b) around to face the car, and placed his hands on top of the hood to be frisked. Det. Scarlatelli frisked § 87(2)(b) for weapons, patting the latter down from his shoulders to his pants. At no point during this interaction did Det. Scarlatelli use force, or slam § 87(2)(b)’s head into the car. The frisk did not reveal anything, and § 87(2)(b) was brought to the rear of the vehicle.

While § 87(2)(b) and § 87(2)(b) were being brought to the rear of the vehicle, Det. Marshall stuck his torso into the driver’s side and conducted a visual search of the car for any weapons or contraband. He did not go into any other part of the vehicle, and did not find anything. Det. Marshall stated that he searched the vehicle for his safety, and because he believed there were weapons and contraband inside, evinced by § 87(2)(b)’s erratic driving and initial refusal to show his hands.

During the vehicle search, § 87(2)(b)’s family members had come onto the sidewalk. After § 87(2)(b) brought out § 87(2)(b)’s license, Det. Marshall verified its validity, conferred with Sgt. Ryan, and placed § 87(2)(b) under arrest for reckless driving and resisting arrest. § 87(2)(b) did resist being placed in handcuffs by tensing his arms.

When Det. Marshall was questioned during his CCRB interview about whether he was aware of § 87(2)(b)’s chipped teeth during the incident, he was exceptionally evasive in his answers. Det. Marshall continually responded to the question indirectly, stating that he did not know what the condition of § 87(2)(b)’s teeth were previously, before finally saying that he could not recall.

Subject Officer: SGT. JOHN RYAN

- Sgt. Ryan was § 87(2)(b).
- Sgt. Ryan worked between the hours of 3:25 p.m. on December 26, 2013, and 12 a.m. on December 27, 2013. He was assigned as the Team Leader, was working with Det. Steven Marshall and Det. Mark Scarlatelli, was in plainclothes, and driving in unmarked police vehicle number 47753, which is a black Dodge.

Memo Book

Sgt. Ryan's memo book entries pertaining to this incident (enc. H-1 – H-4) state verbatim that "at 8:02 p.m., crime arrest 255 Regis. Reckless Driving. Resisting (chipped tooth) prisoner with one passenger not arrested."

CCRB Statement

Sgt. Ryan was interviewed twice at the CCRB, once on April 2, 2014 (enc. H-5 – H-7) and the second time on May 1, 2014 (enc. H-8 – H-9). His statements had slight inconsistencies with that of Det. Scarlatelli, but were generally consistent with that of Det. Marshall. They are summarized below with the differences noted.

On December 26, 2013, at around 8 p.m., Sgt. Ryan observed a Mercedes driving at an excessive rate of speed, make illegal lane changes, and cross through zebra stripes. Sgt. Ryan's police vehicle pursued the civilian vehicle in order to stop the driver who was considered under arrest for reckless driving. The Mercedes soon stopped, on its own accord, not in response to police lights, in front of § 87(2)(b). Sgt. Ryan's vehicle pulled up in front of the Mercedes. Sgt. Ryan approached § 87(2)(b). Det. Scarlatelli approached § 87(2)(b) and Det. Marshall stood at the front of the Mercedes with his gun drawn and pointed out in front of him.

Sgt. Ryan explained that given § 87(2)(b)'s reckless driving and his voluntary stop that was not in response to police lights, the officers did not know what to expect, thus their levels of suspicion were raised regarding the situation. Additionally, it was dark outside, and the officers could not clearly see everything that was transpiring with the civilians. When Det. Scarlatelli asked § 87(2)(b) to step out of the vehicle, the latter refused to comply so that eventually, Det. Scarlatelli had to grab § 87(2)(b)'s arms and physically remove him from the car.

Meanwhile, Sgt. Ryan was also commanding § 87(2)(b) to step out of the vehicle. § 87(2)(b) complied, and told Sgt. Ryan that he had been trying to tell § 87(2)(b) to not drive so fast. While Sgt. Ryan was dealing with § 87(2)(b) on the passenger side, he had limited observation of the interaction between Det. Scarlatelli and § 87(2)(b).

Once § 87(2)(b) was pulled out of the car, he was commanded to place his hands behind his back. He however refused to do so and was yelling loudly. Det. Scarlatelli was ultimately able to get § 87(2)(b)'s hands behind his back and handcuffed. Sgt. Ryan could not remember clearly many of the details involved with the handcuffing. He did recall § 87(2)(b) being frisked, but could not describe it. He denied ever observing Det. Scarlatelli slam § 87(2)(b)'s head onto the hood of the car.

Sgt. Ryan eventually brought § 87(2)(b) to the rear of the vehicle, where Det. Scarlatelli also brought § 87(2)(b) to afterwards. § 87(2)(b) was already handcuffed, and stated that his tooth was chipped. § 87(2)(b) opened his mouth to show his dental condition, which allowed Sgt. Ryan to see that § 87(2)(b)'s teeth were indeed chipped. Det. Scarlatelli was able to hear this complaint, and he stated that he did not know if § 87(2)(b)'s tooth was already chipped before the incident.

Sgt. Ryan stated that while he waited at the rear of the vehicle with § 87(2)(b) and § 87(2)(b) either Det. Scarlatelli or Det. Marshall, or both of them, searched the grab-able areas of the driver's seat, but did not find anything. Sgt. Ryan could not recall if he frisked § 87(2)(b) during

this incident. He denied having any physical interaction with § 87(2)(b) as the latter was polite and cooperative throughout the entire incident.

Medical Records

On § 87(2)(b), the physician at § 87(2)(b) diagnosed § 87(2)(b) with fractures of the outer most enamel of his upper middle teeth (enc. MR-21).

Arrest for Incident and Disposition

- § 87(2)(b)

Status of Civil Proceedings

- § 87(2)(b) filed a notice of claim with the City of New York on February 6, 2014, claiming serious physical injuries and seeking adjustment and payment as redress (enc. CA-1 – CA-4).
- A 50-H hearing was held on § 87(2)(b) (enc. CB-1 – CB-119).
- As of July 8, 2014, this case remains open.

Civilian Criminal History

- As of May 2, 2014, Office of Court Administration records reveal no other criminal convictions for § 87(2)(b) (J-1 – J-5), and no convictions for § 87(2)(b) (enc. J-6 – J-8).

Civilians CCRB History

- This is the first CCRB complaint filed by § 87(2)(b) (enc. A-5).
- This is the first CCRB complaint involving § 87(2)(b) (enc. A-6).

Subject Officers CCRB History

- Det. Steven Marshall has been a member of the service for eight years and there are no substantiated CCRB allegations against him (enc. A-1).
- Det. Marks Scarlatelli has been a member of the service for nine years and there are no substantiated CCRB allegations against him (enc. A-2).
- Sgt. John Ryan has been a member of the service for eight years and there are no substantiated allegations against him (enc. A-3 – A-4).

Conclusion

Identification of Subject Officers

Sgt. Ryan, Det. Scarlatelli, and Det. Marshall all confirmed their interaction with § 87(2)(b) and § 87(2)(b)

Allegations Not Pleaded

Because § 87(2)(b) was stopped in lieu of a lawful arrest, a vehicle stop allegation is not being pleaded. Frisk and search allegations are not being pleaded against Det. Scarlatelli also because they were conducted in lieu of a lawful arrest.

Investigative Findings and Recommendations

Allegation A: Abuse of Authority – Det. Steven Marshall pointed his gun at § 87(2)(b)

§ 87(2)(b) and § 87(2)(b) both alleged when they stopped in front of § 87(2)(b) Det. Marshall exited his unmarked police car, and stood in front of § 87(2)(b)'s Mercedes, pointing his gun at them. § 87(2)(b) and § 87(2)(b) also stated that both of them complied with officer directives to put their hands up. Neither § 87(2)(b) nor § 87(2)(b) had noticed the officers' unmarked vehicle prior to it pulling up in front of them. § 87(2)(b) stated that the unmarked police vehicle abruptly stopped in front of him at an angle in a manner as if to cut him off. He also admitted that he may have been speeding on the expressway prior to arriving at his residence, although he denied nearly causing any motor vehicle collisions or driving recklessly.

Det. Marshall, who was operating the unmarked vehicle on the day of the incident, stated that he had observed § 87(2)(b) commit a number of serious traffic violations, almost causing a two vehicle collision as a result. When he turned on his police lights, § 87(2)(b) ignored them, did not stop, and continued driving. The only way Det. Marshall eventually obtained § 87(2)(b)'s compliance was to cut in front of § 87(2)(b)'s car to block his path. When the officers exited their unmarked vehicle, Det. Scarlatelli commanded § 87(2)(b) to put his hands up and step out of the vehicle, but § 87(2)(b) refused to comply. Because Det. Marshall could not see § 87(2)(b)'s hands, for fear of his and his partners' safety, he drew his weapon and pointed it at § 87(2)(b). When Det. Marshall moved to the driver's side though, and observed § 87(2)(b)'s hands clutching the seatbelt, he holstered his gun.

Det. Scarlatelli and Sgt. Ryan consistently corroborated Det. Marshall's statements. Sgt. Ryan specified that because § 87(2)(b) had been driving recklessly, and stopped the vehicle on his own, the officers did not know what § 87(2)(b)'s intentions were. § 87(2)(b), § 87(2)(g)

An officer may draw his weapon and point it at a civilian during a vehicle stop if the officer has reasonable fear for his safety given the totality of the circumstances. Broad discretion and due deference should be given to the judgment of the officer at the time and scene of the incident. PD v. Gliner, OATH Index No. 955/00 (2000) (enc. AB-1 – AB-18)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation B: Force – Det. Mark Scarlatelli used physical force against § 87(2)(b)

§ 87(2)(b) alleged that after he was pulled out of the vehicle, Det. Scarlatelli slammed § 87(2)(b)'s head onto the hood of the car, causing his two front teeth to become chipped. § 87(2)(b) corroborated this allegation, stating that he too observed Det. Scarlatelli slam § 87(2)(b)'s head onto the car. As a result of § 87(2)(b)'s teeth making impact, § 87(2)(b)'s car sustained two large scratches on the left edge of the car roof. § 87(2)(b) stated that § 87(2)(b)'s teeth were not damaged prior to this incident.

Det. Scarlatelli admitted to using minimal force in getting § 87(2)(b) to cooperate with officer directives, but denied ever slamming § 87(2)(b)'s head onto the car. He also stated that he never heard § 87(2)(b) complain about his teeth being chipped as a result of police force, but did remember § 87(2)(b) complaining about his mouth hurting. Both Det. Marshall and Sgt. Ryan denied ever observing Det. Scarlatelli slam § 87(2)(b)'s head onto the car as well. However, in § 87(2)(b)'s Criminal Court Complaint, Det. Marshall described § 87(2)(b) as actively resisting arrest, physically knocking into Det. Scarlatelli. When asked whether they heard § 87(2)(b) complain about his teeth during the incident, Det. Marshall was exceptionally evasive in his answers, while Sgt. Ryan answered affirmatively.

§ 87(2)(b) was brought to § 87(2)(b) later on, where he complained that his teeth had been chipped when he was arrested. The physician diagnosed him with fractured teeth.

Patrol Guide Procedure 203-11 states that an officer may use “only that amount of force necessary to overcome resistance,” and prohibits force that is “excessive, wrongful or improperly applied.” (enc. AC-1 – AC-2)

It is undisputed that § 87(2)(b)'s teeth were chipped sometime after leaving the family gathering at his house, as § 87(2)(b) stated that § 87(2)(b)'s teeth were completely normal right before the incident. In addition, the two scratches on § 87(2)(b)'s car, which are on the exact location of the car that § 87(2)(b) claimed his teeth made impact with, corroborates his allegations. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation C: Abuse of Authority – Sgt. John Ryan frisked § 87(2)(b)

§ 87(2)(b) alleged that after Sgt. Ryan brought him to the back of the vehicle, Sgt. Ryan frisked him. § 87(2)(b) never alleged that § 87(2)(b) was frisked, and denied ever observing Sgt. Ryan frisk § 87(2)(b) during the incident. Sgt. Ryan could not recall ever frisking or making any physical interaction with § 87(2)(b) since the latter was polite and compliant throughout.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation D: Abuse of Authority – Det. Steven Marshall searched the vehicle in which § 87(2)(b) and § 87(2)(b) occupied.

§ 87(2)(b) and § 87(2)(b) both stated that while they were at the rear of the Mercedes, they observed Det. Marshall perform a vehicle search which involved looking through the entire car, including the glove compartments, underneath the foot mats, and the trunk.

Det. Marshall admitted to searching the vehicle for weapons and contraband because § 87(2)(b) had been driving erratically, and had refused to display his hands at the beginning of the incident. However, he limited the scope of his search to the front driver's seat, and specified that it was merely visual.

An officer is permitted to conduct a vehicle search following a lawful vehicle stop if he is "acting on an articulable basis to fear for his own safety." Otherwise, especially when "the suspects have been removed and patted down without incident," a vehicle search is unjustified. People v. Mundo 99 N.Y.2d 55 (2002) (enc. AA-1 – AA-5)

It is undisputed that Det. Marshall searched § 87(2)(b)'s vehicle after § 87(2)(b) was frisked and placed at the rear of the vehicle with § 87(2)(b). Det. Scarlatelli had not recovered anything from frisking § 87(2)(b) and Sgt. Ryan had noted that § 87(2)(b) was polite and cooperative throughout the incident. § 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation E: Abuse of Authority – Det. Mark Scarlatelli searched the vehicle in which § 87(2)(b) and § 87(2)(b) occupied.

§ 87(2)(b) and § 87(2)(b) both stated that while they were at the rear of the Mercedes, they observed Det. Scarlatelli search the vehicle at the same time as Det. Marshall was. § 87(2)(b) who § 87(2)(b) and § 87(2)(b) described as having witnessed the vehicle search, did observe Det. Marshall search the car, but did not see Det. Scarlatelli do so.

Det. Scarlatelli denied searching the vehicle, and Det. Marshall identified himself as the only officer who searched the vehicle. Sgt. Ryan could not clearly remember which officer performed the search, stating that it could have been Det. Scarlatelli, Det. Marshall, or both of them.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)

Team: 3

Investigator:	_____	<u>Yanjiao Chen</u>	_____
	Signature	Print	Date

Supervisor:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date